

HONORABLE JAMES L. ROBERT

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICROSOFT CORPORATION,  
Plaintiff,

v.

MOTOROLA, INC., et al.,  
Defendants.

No. C10-1823-JLR

[PROPOSED] ORDER GRANTING  
MICROSOFT'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT

**NOTED: Friday, September 30, 2011**

MOTOROLA MOBILITY, INC., et al.,  
Plaintiffs,

v.

MICROSOFT CORPORATION,  
Defendant.

This matter came before the Court on the Motion of Microsoft Corporation for Partial Summary Judgment against Motorola, Inc. (n/k/a Motorola Solutions, Inc.), Motorola Mobility, Inc., and General Instrument Corporation (collectively "Motorola") that:

1. Motorola entered into binding contractual commitments with the Institute of Electrical and Electronics Engineers ("IEEE") and the International Telecommunications Union ("ITU"), committing to license its declared-essential patents on reasonable and nondiscriminatory ("RAND") terms and conditions;

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2. Microsoft is a third-party beneficiary of Motorola's contracts with the IEEE and ITU;
3. When offering a license to a third-party beneficiary of Motorola's commitments to the IEEE and ITU such as Microsoft, Motorola must offer RAND terms and conditions;
4. Motorola's offers to Microsoft to license Motorola's H.264 and 802.11 declared-essential patents breached Motorola's contractual commitments to the IEEE, ITU, and Microsoft because no reasonable trier of fact could conclude that Motorola's offers were on RAND terms and conditions; and
5. Microsoft is entitled to a license to Motorola's H.264 and 802.11 declared-essential patents on RAND terms and conditions, with the specific terms of such license to be resolved at a later time.

The Court heard the oral argument of counsel and considered the following pleadings filed in support of and in opposition to the Motion:

1. Microsoft's Motion for Partial Summary Judgment;
2. Declaration of Christopher T. Wion in Support of Microsoft's Motion for Partial Summary Judgment and exhibits attached thereto;
3. Declaration of Roy Harlin in Support of Microsoft's Motion for Partial Summary Judgment;
4. Defendants' Opposition to Microsoft's Motion for Partial Summary Judgment;
5. Declaration of Richard J. Holleman and exhibits attached thereto;
6. Declaration of Kevin J. Post and exhibits attached thereto;
7. Declaration of David J. Teece and exhibits attached thereto;
8. Microsoft's Reply in Support of Motion for Partial Summary Judgment; and
9. Declaration of Shane P. Cramer in Support of Microsoft's Motion for Partial Summary Judgment and exhibits attached thereto.

Having considered the above pleadings and materials, the argument of counsel, and being otherwise fully advised,

1 IT IS ORDERED that Microsoft's Motion for Partial Summary Judgment is  
2 GRANTED in its entirety.

3 DONE IN OPEN COURT this \_\_ day of \_\_\_\_\_, 2011.

4  
5 \_\_\_\_\_  
6 HONORABLE JAMES L. ROBERT

7 Presented by:

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9 By /s/ Arthur W. Harrigan, Jr.

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 18<sup>th</sup> 2011, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

**Attorneys for Defendants Motorola, Inc. (n/k/a Motorola Solutions, Inc.),  
Motorola Mobility, Inc. and General Instrument Corporation**

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